

1 BRANDON C. FERNALD (BAR NO. 222429)

2 *brandon@fernaldlawgroup.com*

3 PAUL W. SANDE (BAR NO. 296357)

4 *paul@fernaldlawgroup.com*

5 **FERNALD LAW GROUP LLP**

6 510 W. 6th St., Suite 700

Los Angeles, CA 90014

Telephone: (323) 410-0300

Facsimile: (323) 410-0330

7 Attorneys for Plaintiff

8 TAP MANUFACTURING, LLC

[CLOSED]

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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
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15 TAP WORLDWIDE, LLC, a Delaware
16 limited liability company,

17 Plaintiff,

18 v.
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20 ONYX SALES & MARKETING,
21 INC., a California Corporation,
22 JUSTIN ZEV, an individual, and
DOES 1-10, inclusive,

23 Defendants.
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CASE NO. 2:15-cv-01183-DDP-JPR

Honorable Dean D. Pregerson

**ORDER RE STIPULATED
PERMANENT INJUNCTION AND
ORDER OF DISMISSAL**

1 It is hereby stipulated by and among Plaintiff TAP Worldwide, LLC (“TAP
2 Worldwide”) and Defendants Onyx Sales & Marketing, Inc. and Justin Zev
3 (collectively referred to herein as “Defendants”) that the following Permanent
4 Injunction (“Injunction”) and Order of Dismissal be entered by the Court, premised
5 upon the following:

6 1. The Court has jurisdiction over the parties and the subject matter at
7 issue in this action and will retain said personal and subject matter jurisdiction for
8 the purposes of enforcing this injunction;

9 2. The term “TAP Marks” refers to the trademarks “POISON SPYDER
10 CUSTOMS,” “SMITTYBILT,” “SRC,” and “XRC” as well as any trademarks
11 confusingly similar thereto;

12 3. The TAP Marks are valid and distinctive, and are owned by TAP
13 Worldwide;

14 4. TAP Worldwide filed the herein lawsuit against Defendants pursuant
15 to 15 U.S.C. §§ 1114, 1125(a) & (c), California common law, and Cal. Bus. and
16 Prof. Code § 17200 alleging that Defendants were engaging in the unauthorized use
17 of the TAP Marks in connection with the marketing and sale of their own
18 aftermarket SUV and truck parts and accessories.

19 5. At present, Defendants have been marketing and selling aftermarket
20 SUV and truck parts and accessories that TAP Worldwide contends are identified
21 by the TAP Marks on E-Commerce websites including, but not limited to,
22 Ebay.com®, Amazon.com®, Craigslist.org®, Sears.com®, tuffstuff4x4.com, as
23 well as through their own E-Commerce website called www.truckandwinch.com
24 (collectively, the “E-Commerce Websites”)

25 6. Entry of a permanent injunction will achieve the purpose of the
26 Lanham Act and California state and common law.

1 Based upon the stipulation of the Parties and finding good cause therefor, the
2 Court hereby **ORDERS**:

3 7. Defendants along with their agents, servants, employees,
4 representatives, successors and assigns, and all those persons or entities acting in
5 concert or participation with them who receive actual notice of this Order, shall be
6 and hereby are PERMANENTLY ENJOINED and RESTRAINED from:

7 8. Using any of the TAP Marks, or any other trademark that is
8 confusingly similar to the TAP Marks, or any derivation thereof, for any purpose in
9 commerce;

10 9. Engaging in any course of conduct with respect to any of the TAP
11 Marks that is likely to mislead the public into believing that Defendants are
12 affiliated with or otherwise connected to TAP Worldwide, including but not limited
13 to the following:

14 a. Engaging in any course of conduct with respect to any of the
15 TAP Marks that is likely to mislead the public into believing that the products
16 marketed and/or offered for sale by Defendants are licensed, sponsored, authorized,
17 or otherwise approved by TAP Worldwide;

18 b. Using the TAP Marks in connection with the marketing and sale
19 of Defendants own aftermarket SUV and truck parts and accessories on any E-
20 Commerce Website; or

21 c. Engaging in any other activity constituting infringement of any
22 of the TAP Marks.

23 **ADDITIONAL TERMS:**

24 10. **Future Claims Unaffected.** Nothing in this Stipulated Permanent
25 Injunction and Order of Dismissal precludes TAP Worldwide from asserting any
26 claims or rights that arise solely after entry of this Stipulated Permanent Injunction
27 and Order of Dismissal or that are based upon any breach of, or the inaccuracy of,
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1 any representation or warranty made by Defendants in this Stipulated Permanent
2 Injunction and Order of Dismissal or the settlement agreement reached by the
3 Parties. Upon proof of any violations by Defendants of the provisions of this
4 Permanent Injunction, the Court shall be authorized to award appropriate relief.

5 11. **Non-Appealability.** This Stipulated Permanent Injunction and Order
6 of Dismissal is final and may not be appealed by either party.

7 12. **Fed. R. Civ. P. 65.** This Stipulated Permanent Injunction applies to
8 and binds all parties who are in active concert or participation with Defendants who
9 receive actual notice of this Order as provided in Fed. R. Civ. P. 65(d). Defendants
10 waive any objection under Fed. R. Civ. P. 65.

11 13. **Notice Obligation.** Defendants are under a duty to provide actual
12 notice to all persons who may be obligated under the terms of this Stipulated
13 Permanent Injunction. The failure on the part of the Defendants to give actual
14 notice to their agents, servants, employees, representatives, successors and assigns,
15 and all persons or entities acting in concert or participation with them will result in
16 Defendants being liable for any violations of this Stipulated Permanent Injunction.

17 14. **Survival.** This Stipulated Permanent Injunction and Order of
18 Dismissal shall bind Defendants and their agents, servants, employees,
19 representatives, successors and assigns, and all those persons or entities acting in
20 concert or participation with them who receive actual notice of this Order.

21 15. **Waiver of Appeal.** TAP Worldwide and Defendants waive any right
22 to appeal the entry of this Stipulated Permanent Injunction.

23 16. **Consent.** Defendants affirm that their respective consent to this
24 Stipulated Permanent Injunction is given freely and voluntarily, and after having
25 had the opportunity to seek legal counsel.

26 17. **Dismissal.** TAP Worldwide's claims against Defendants are hereby
27 dismissed with prejudice and without costs to either Party, except the Court shall
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1 retain jurisdiction to enforce this Stipulated Permanent Injunction and Order of
2 Dismissal and the Settlement Agreement between the parties.

3 18. **Attorney's Fees.** In the event that TAP Worldwide brings any action
4 to enforce a material term or condition of this Stipulated Permanent Injunction, then
5 the party in whose favor judgment shall be entered shall be entitled to have and
6 recover from the disputing party, severally and not jointly, any and all costs and
7 expenses, including attorneys' fees, incurred in such action. The Court shall be
8 authorized to award damages and any other relief that the Court deems proper.
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12 **IT IS SO ORDERED.**
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14 Dated: December 02, 2015
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19 Hon. Dean D. Pregerson
20 UNITED STATES DISTRICT JUDGE
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